HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.21245 of 2006

Date: 26th December, 2006

Between :-

Chitti Reddy Narasimha Reddy .. Petitioner

And

Parkal Gram Panchayat
Rep. by its Executive Officer,
Parkal village, & Mandal
Warangal District. .. Respondent

HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.21245 of 2006

ORDER:-

This Court ordered *notice before admission* on 12-10-2006 and *status quo* was granted for a limited period, which is being extended from time to time.

2. Heard Sri K.V.Bhanu Prasad, the learned Counsel representing the petitioner and Sri Prem Sagar, the learned standing Counsel representing respondent.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent in trying to demolish the shop rooms of the petitioner without issuing notice and without passing any orders on the application submitted by the petitioner on 14-8-2006 for grant of permission as illegal, arbitrary, malafide, opposed to principles of natural justice and contrary to the Rules and Law and consequently direct the respondent not to proceed against the shop rooms of the petitioner without due process of Law in the interest of justice and pass such other suitable orders.

4. It is stated that by the petitioner that the petitioner is the absolute owner and possessor of 480 sq.yards of site in Sy.No.1112 of Parkal village and his mother purchased

this extent wayback in 1960 under two registered sale deeds and one plot is in an extent of 315 sq.yds and another is in an extent of 165 sq.yards. Subsequently, a suit was filed by one Sadanandam for Specific Performance of the agreement of sale stating that his father executed an agreement of sale in his favour on 12-4-1989 and after the death of his father, the said Sadanandam filed suit against the petitioner, his mother, brother and sisters and the said suit was dismissed and the said matter was carried by way of appeal to this Court A.S.No.987/97 and the same was dismissed on 3-3-2004. It is also stated that after the entire dispute was over, the petitioner was given this property by his mother and there is no dispute among the family members and after this property had fallen to his share, in order to construct shop rooms in the said site, the petitioner made an application to the respondent Panchayat through the President of Panchayat on 14-8-2006 along with a plan. The said application and the plan were received by the then Sarpanch of Gram Panchayat Mr.Bandari Babu on 14-8-2006 itself. Ever since, his application for grant of permission is with the respondent Panchayat and since there was no response from the Panchayat, thinking that the permission was approved under the Gram Panchayat Rules and bylaws, the petitioner constructed the shop

rooms. It is also stated that the shop rooms constructed by the petitioner are in accordance with the Building bylaws and they are not contrary and objectionable to the Rules. It is also stated that even if some deviations are there from the Rules and Regulations, the petitioner is entitled to obtain a revised sanction as per Rule 29 of the A.P. Gram Panchayat Land Development (Lay our and building) Rules, 2002. It is also further stated that the petitioner submitted the plan and requisition for grant of permission on 14-8-2006 and the Sarpanch at the relevant point of time received on behalf of the Gram Panchayat and the said application is still pending with the respondent authorities. It is neither rejected nor sanctioned so far. Rule 26 of the Rules dealing with Sanction or Refusal of permission clearly says that the lay out plans/building plans with drawings and specifications may be sanctioned with or without modifications or directions as are deemed necessary are refused by the Executive Authority within a period of 15 days in case of individual residential buildings. "*Where no orders are communicated by the Executive Authority of sanction or refusal of the permission, the Executive Authority shall be deemed to have permitted the proposed permission and the owner may go ahead with the work provided that the*

same is in accordance with the Rules." Therefore, the specific stand taken by the petitioner is that under the deeming provision of Rule 26, referred to supra, his application for grant of permission is deemed to have been approved. It is also further stated that the petitioner had completed the construction of shop rooms and then the trouble started when the new elected body came into power recently. It is also stated that the local Gram Panchayat politics also are playing a various role to demolish his shop rooms and the officials of the respondent orally warned the petitioner to demolish the shop rooms stating that the petitioner is not having any sanctioned plan. The petitioner also states that he had brought it to their notice that his application is still pending and they came to his shop rooms on 11-10-2006 and informed the petitioner that within three days the petitioner may have to remove the shop rooms voluntarily if not they will remove the shops officially after three days. In such circumstances, the petitioner approached this Court.

5. In the counter affidavit of respondent several of the averments made in the affidavit filed in support of the Writ Petition had been denied. It is averred in para 2 of the counter affidavit that the writ petitioner started construction of shops without making any application to the Gram Panchayat. Specific stand is taken that it is false to say

that the petitioner made an application to the Sarpanch on 14-8-2006 along with the plan. The writ petitioner has to given application along with necessary documents as per G.O.Ms.No.67 PR&RD (PTS-IV) dated 26-2-2002 to the Gram Panchayat. Further specific stand is taken that the averment made that the writ petitioner gave application to Mr. Bandaru Babu, Incharge Sarpanch, is not correct. But it is stated that the said Mr.Bandaru Babu was Incharge Sarpanch for one month only. The writ petitioner is not entitled to obtain a revised sanction as per Rule 29 of G.O.Ms.No. 67 PR&RD (PTS-IV) dated 26-2-2002. Rule 29 reads as hereunder:-

> ***"Deviations during construction/undertaking up layout works:-*** *If during the execution of any building construction any deviation is made from the sanctioned plan, the owner shall obtain revised sanction as per the above procedure and rules."*

It is also stated that Rule 29 is applicable to person who made application to Gram Panchayat and obtained permissions and made some deviations from the sanctioned plan during construction and hence the said Rule is not applicable to the case of the writ petitioner. Thus specific stand is taken in the facts and circumstances, the writ petitioner cannot take advantage of the deemed provision.

6. In the light of the facts and circumstances well explained and also in the light of Rules 26 and 29, referred to supra, this Court is not inclined to express any opinion relating to the facts and circumstances whether, in fact, an application was made in accordance with law and procedure by the writ petitioner to the then Incharge Sarpanch or not, inasmuch as, specific stand is taken that no such application was made by the writ petitioner, the writ petitioner herein is permitted to make an application in accordance with law to the respondent and the respondent to consider the said application and dispose of the same in accordance with law and procedure within a period of fifteen days from the date of receipt of the said application and till appropriate decision is taken in this regard, *status quo* obtaining as on today to be maintained.

7. With the above directions, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

26th December, 2006

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